# United States Court of Appeals for the Second Circuit



**APPENDIX** 

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# UNITED STATES DISTRICT COURT DISTRICT OF CONNECTICUT THOMAS LABONTE H-75-119 CIVIL : VS. CARL ROBINSON, Warden of C.C.I. and J. BERNARD GATES, Chairman of the Connecticut State Board : of Parole, et al MICHAEL HOLUP : H-75-174 CIVIL vs. J. EERNARD GATES, and/or any member of the Parole Board HOWARD STUDLEY : H-75-144 CIVIL V3. CARL ROBINSON, Warden, J. BERNARD CATES, Chairman of the Connecticut State Board of

SEPTEMBER 5, 1975 HARTFORD, CONNECTICUT

REFORE:

Parole, et al

HON. M. JOSEPH BLUMENFELD, U.S.D.J.

# HEARING ON THE MERITS

PAUL A. COLLARD

OFFICIAL COURT REPORTER

U. S. COURTHOUSE

450 MAIN STREET

HARTFORD, CONN 06103

#### Appearances:

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### For the Plaintiffs:

STEPHEN WIZNER, ESQ.
PHILIP KUNSBERG, ESQ.
Yale Legal Services Organization
127 Wall Street
New Haven, Connecticut

## For the Defendants:

STEPHEN J. O'NEILL CORNELIUS TOOHEY, Assistant Attorneys State of Connectic 340 Capitol Avenue Hartford, Connecticut

THE COURT: We have three cases here this morning, all civil rights actions, for LaBonte, Studley and Holup against Members of the Parole Board.

MR. WIZNER: That's correct, your Honor.

THE COURT: Right?

MR. WIZNER: If it please the Court, my name is Stephen Wizner and I and Mary Keller are the attorneys for the petitioners in this action.

At this time, your Honor, I would like to introduce to the Court Philip Kunsberg, whom you have met before, and move his admission pursuant to Local Rule 26. He will be examining, with the Court's permission, the witnesses in this case.

Mr. Kunsberg has previously appeared before
your Honor in the Manderville matter. Miss Keller
and I, of course, will be here to supervise him.

THE COURT: Granted.

MR. WIZNER: Thank you, your Honor.

MR. KUNSEERG: Your Honor, I would request a few moments to finish entering the exhibits.

THE COURT: Very well.

Who is with you?

MR. O'NEILL: Mr. Toohey. He's an Assistant Attorney General - Cornelius Francis Toohey.

| 1  | (Whereupon, the following exhibits were           |
|----|---|
| 2  | marked full exhibits:)                            |
| 3  | (Plaintiffs' Exhibit 1: Transcript of             |
| 4  | Thomas LaBonte.)                                  |
| 5  | (Plaintiffs' Exhibit 2: Transcript of             |
| 6  | Howard Studley.)                                  |
| 7  | (Plaintiffs' Exhibit 3: Transcript of             |
| 8  | Michael Holup.)                                   |
| 9  | (Plaintiffs' Exhibit 4: Statement of              |
| 10 | Organization and Procedures, State of Connecticut |
| 11 | Board of Parole.)                                 |
| 12 | (Plaintiffs' Exhibit 5: Letter to Mr. Gates       |
| 13 | from Mr. LaBonte dated 1/26/75.)                  |
| 14 | (Plaintiffs' Exhibit 6: Statement of Reasons      |
| 15 | Re H. Studley dated 1/9/75.)                      |
| 16 | (Plaintiffs' Exhibit 7: Addendum to H.            |
| 17 | Studley's Progress Report, dated 1/29/74.)        |
| 18 | (Plaintiffs' Exhibit 8: Letter to Mr. Gates       |
| 19 | from H. Studley dated 1/31/74.)                   |
| 20 | (Plaintiffs' Exhibit 9: Letter to Board of        |
| 21 | Parole from H. Studley dated 5/2/73.)             |
| 22 | (Plaintiffs' Exhibit 10: FBI record of            |
| 23 | Michael Holup.)                                   |
| 24 | (Plaintiffs' Exhibit 11: Progress Report of       |
| 25 | Michael Holup, dated 12/11/70.)                   |

(Plaintiffs' Exhibit 12: Progress Report of Michael Holup dated 5/15/75.)

(Plaintiffs' Exhibit 13: Board of Parole

Statement of Reasons Re M. Holup, dated 11/12/74.)

MR. O'NEILL: Your Honor, before we start, we had two probably minor problems:

I'm sure that when Mr. Wizner brought this action he called the Board of Parole and asked who was on the Board of Parole, and he made his complaint out accordingly. Since then there have been a number of changes, so there probably will have to be some amended complaint naming the present membership. And we will accept service and waive whatever we have to waive, to straighten that out.

THE COURT: File a substitution.

MR. WIZNER: We will file it.

MR. O'NEILL: The second problem was that the original complaint requested, among other things, injunctive relief. The rules challenged in this case are rules of statewide application. The procedures challenged are applicable in all parole granting hearings throughout the State of Connecticut, thus perhaps raising the problem of the necessity for a three judge court.

I discussed this with Mr. Kunsberg and he has filed an amended complaint removing his prayer for an injunction. So as I understand declaratory judgment, you don't need a three judge court.

THE COURT: Right.

MR. O'NEILL: But the declaratory judgment has language in it which sort of makes it sound like it's really a request for an injunction.

THE COURT: We will cross that bridge when we get to it. Let's treat this now as an action for declaratory judgment.

MR. WIZNER: Your Honor, the petitioners in this action seek a declaratory judgment and not an injunction.

MR. O'NEILL: Okay. Then that's straightened out.

MR. KUNSBERG: Your Honor, this is an action under the Civil Rights Act in which plaintiffs challenge the practices and procedures of the Connecticut Board of Parole at parole release hearings.

The case is of three plaintiffs. Thomas

LaBonte, Howard Studley and Michael Holup have

been consolidated for hearing on the merits today.

Each plaintiff seeks specified procedural

rights at a forthcoming parole release hearing and a declaratory judgment declaring that these procedures are constitutionally mandated.

In addition, Mr. Holup alone claims that he was denied parole because of personal bias against him. He seeks one million dollars in damages from each member of the Board of Parole which participated in the decision to deny him parole.

Plaintiffs intend to show that they were gravely prejudiced by the denial of the specified procedural rights. Such a demonstration requires a preliminary understanding of the general rules and general procedures of the Connecticut Board of Parole.

THE COURT: How do you propose to present that?

Are there regulations or guidelines of the Board?

MR. KUNSBERG: We have entered into evidence, your Honor, a booklet which outlines those procedures. We don't intend to reproduce the information that is presented in the booklet. It is in evidence.

THE COURT: Let's see it.

It is in evidence, you say?

MR. KUNSEERG: Yes, it is, your Honor.

THE COURT: You mean you just offered it?

THE COURT: Their own bylaws, so to speak?

MR. O'NEILL: Yes. Followed by each individual panel.

THE COURT: All right. Fine.

MR. KUNSBERG: Plaintiffs primarily intend to show prejudice by an investigation of their particular cases, the facts of these particular hearings.

THE COURT: Why?

Do you have a challenge to what is contained in Exhibit 4?

MR. KUNSBERG: Yes, we do, your Honor. We say that those procedures, as they are currently employed, are inadequate.

THE COURT: Now, just a minute.

As currently employed or as stated?

MR. KUNSBERG: Both, your Honor.

THE COURT: Are we going to get specific on this?

MR. KUNSBERG: Yes.

We have also entered into evidence transcripts of the hearings themselves, transcripts made from tape recordings of the hearings. Our examination will primarily focus on the events that transpired at those hearings.

It is our contention that because of the lack of basic minimal procedural rights plaintiffs were unable at those hearings to present their case adequately.

THE COURT: Well, these are all generalities and I don't know what you are talking about.

MR. KUNSBERG: Particularly, your Honor -THE COURT: Right, "specifically."

MR. KUNSBERG: Specifically we are asking for access to the files previous to the hearings.

The Connecticut Board of Parole currently does give notice. We would like to investigate the adequacy of that notice.

THE COURT: Adequacy of notice?

MR. KUNSBERG: Right.

In the sense that we are also requesting prior notice of the adverse evidence relied upon by the Board, access to the files prior to the hearing, representation at the hearing itself, some sort of meaningful guidelines which would at once give the potential parolee a tentative date of parole, as well as establishing specified criteria for the granting or denial of parole.

We also are requesting representation at the hearing by counsel or counsel substitute.

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THE COURT: Well, you said that, "representation at the hearing."

Access to the file prior to the hearing?

MR. KUNSBERG: Correct.

THE COURT: And I thought you said a statement of the grounds for denial of parole prior to the hearing.

MR. KUNSBERG: Yes.

THE COURT: How can they do that prior to the hearing?

MR. KUNSBERG: A statement of the adverse evidence.

Presumably the files are reviewed previous to the hearing.

THE COURT: If you have access to the file you've got access to what's favorable and what's not favorable, right?

MR. KUNSBERG: Correct.

Access to the file would, in fact, your Honor, serve the function of prior notice of the adverse evidence in many respects.

Plaintiffs also seek the right to call witnesses to testify at their hearings, and the right to cross-examine any adverse witnesses.

The Board currently provides a Statement of

Reasons for the denial of parole. Plaintiffs seek a more thorough and specific Statement of 2 3 Reasons. Plaintiffs also seek the right to obtain a transcript of the hearings, a written transcript. 5 And, lastly, the right to appeal an adverse deci-6 sion. 7 MR. O'NEILL: I'm sorry. What was the last claim? 9 MR. KUNSEERG: The right to appeal an adverse 10 decision. 11 MR. O'NEILL: Is that in the complaint? 12 MR. KUNSBERG: I believe so. If it is not --13 THE COURT: Well, I take it that state law 14 does not provide for any sort of appeal from the action of the Board of Parole? 16 MR. O'NEILL: No, there's no statute authorized 17 for it. 18 THE COURT: So you do have a certain constitu-19 tional basis for bringing an action, despite the 20 absence of a procedural authority; right? 21 MR. KUNSBERG: That's correct, your Honor. 22 THE COURT: I mean according to Davis, Jaffe 23 and Friendly there is always a constitutional right |--24 MR. O'NEILL: We had a recent decision from 25

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other words, a secondary level of review of an adverse decision.

THE COURT: You think constitutionally you're entitled to that kind of secondary level of review?

MR. KUNSBERG: I think, your Honor, it's dependent. If plaintiffs can show that inappropriate criteria are used or threatened to be used in the granting or denial of parole, a meaningful --

THE COURT: That's another thing. Criteria is something else again.

MR. KUNSBERG: Plaintiffs do not press the argument that it is constitutionally mandated.

THE COURT: All right.

Now these particular plaintiffs, do I understand, claim that the Board did not follow its own procedures?

MR. KUNSEERG: No, that is not what they are claiming.

THE COURT: That's not their claim.

Their claim is they were denied certain procedures which you say are constitutionally mandated?

MR. KUNSBERG: That's correct.

THE COURT: All right.

So there is no issue of fact about that, I assume?

A

y

MR. KUNSBERG: No.

The issue of fact primarily concerns prejudice of the hearings and the nature of the hearings.

THE COURT: Well, there is always prejudice if it's adverse.

Now, what do you mean by "prejudice?" Are you talking about a matter of personal bias and prejudice of a particular member of the Board?

MR. KUNSEERG: No. In this instance I'm not, your Honor.

THE COURT: What are you talking about?

MR. KUNSBERG: I'm saying, in effect, that because of the unavailability of these procedural rights, or certain among them, it is inherently impossible for inmates such as the plaintiffs, and specifically for plaintiffs, to present an adequate case before the Parole Board.

THE COURT: All right. Well, you don't need them to tell the Court about that.

You just point out the deficiencies in the procedure that's afforded and that makes your case, doesn't it?

The fact that they complain about it, that doesn't add any weight to the fact that they don't get it.

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MR. KUNSBERG: I disagree, your Honor.

process has been held to be a contextual problem. The question of which procedures are mandated in any hearing is a contextual one and it's ultimately dependent on an issue of fact.

THE COURT: What?

MR. KUNSBERG: The nature of the proceeding.

THE COURT: Well, we don't need them to tell

us that.

MR. KUNSBERG: Who, your Honor?

THE COURT: We don't need these plaintiffs.

MR. KUNSBERG: Yes, I believe we do.

THE COURT: Why?

Don't we know what the nature of the proceeding is? If they were allowed to cross-examine --

MR. O'NEILL: Not only that, your Honor, but we even made a transcript off the tape of their most recent hearing.

THE COURT: All right.

So we know what happened. Then in what respect that was deficient or improper is apparent without their testimony.

I don't mind that they had a day off to come in here. But I just don't want to take up time listening to their own concept of why they thought

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it wasn't proper.

We have to examine what was proper and what is constitutionally mandated on the basis of what was given and was denied.

MR. KUNSEERG: Your Honor, let's look at the issue of representation.

THE COURT: Yes. They don't get it.

MR. KUNSBERG: It has been held that representation is unnecessary because the Parole Board, for example, encourages the inmate to bring out his story and assist him, so that he doesn't need another advocate.

By the testimony of the plaintiffs here today we intend to show that this is not the case and that this factual assumption, which is the basis of the judicial decision on what due process requirements are applicable to parole release hearing, is erroneous. And it is essential to show that these assumptions which have been the premise of several judicial decisions are wrong - are clearly wrong.

THE COURT: I'm not going to spend time
listening to these plaintiffs on that question,
as to whether they thought they should have had
a better opportunity.

If the record discloses what opportunity they were afforded and if it discloses at some point where they were cut off or limited to their opportunity, that's what we will use as a basis for these cases.

MR. KUNSBERG: Well, the record does not disclose what else they might have said.

THE COURT: Well, I'm not going to go into that, either.

You can argue about it, if you like. We are not going to waste time listening to what they might have said.

MR. KUNSEERG: I see, your Honor.

Your Honor, one further point, and that is several of the decisions, particularly Johnson and Menechino before it in this Circuit, have held that parole release hearings are essentially non-adversary. And this is the kind of primary reason for a very limited assessment of the parole rights that are required.

We feel that it is essential to have the testimony of these plaintiffs to show that they are, in fact, adversary and it is not something which is apparent --

THE COURT: Well, what they say about it

doesn't change the character of what the proceeding is.

You and I are adversary in a sense that we may have different ideas as to how things should be done. But that doesn't change the character of this being a presentation by you to the Court and urging the adoption of a certain point of view. That doesn't make it adversary, because it can turn into something contentious.

I mean you have to consider what the fundamental purposes are for parole and whether these -I don't know if you call these guidelines or the
conduct is consistent with that concept with what
parole is.

But the fact that they want to make an argument before the Board I don't think is material.

At least I'm not going to waste time hearing evidence on it. And you have an offer implicit in what you stated to introduce that evidence, and it is excluded. So you have the report.

So you have a record on that.

MR. KUNSBERG: Your Honor, plaintiffs call as their first witness Mr. J. Bernard Gates.

| 1  | J. BERNARD GATES, called                                 |  |  |  |  |
|----|--|--|--|--|--|
| 2  | as a witness, being first duly sworn, was examined,      |  |  |  |  |
| 3  | and testified as follows:                                |  |  |  |  |
| 4  | THE CLERK: Kindly state your name and                    |  |  |  |  |
| 5  | address to the Court.                                    |  |  |  |  |
| 6  | THE WITNESS: My name is J. Bernard Gates,                |  |  |  |  |
| 7  | 862 Asylum Avenue, Hartford, Connecticut.                |  |  |  |  |
| 8  | THE COURT: What is your business or occupa-              |  |  |  |  |
| 9  | tion?  |  |  |  |  |
| 10 | THE WITNESS: I'm Chairman of the State Board             |  |  |  |  |
| 11 | of Parole.   |  |  |  |  |
| 12 | THE COURT: What else do you do - anything?               |  |  |  |  |
| 13 | THE WITNESS: That's full time.                           |  |  |  |  |
| 14 | . THE COURT: That's full time.                           |  |  |  |  |
| 15 | And how do you happen to become chairman?                |  |  |  |  |
| 16 | THE WITNESS: Appointed by the governor to a              |  |  |  |  |
| 17 | four-year term, confirmed by either House of the         |  |  |  |  |
| 18 | General Assembly.  |  |  |  |  |
| 19 | THE COURT: All right.                                    |  |  |  |  |
| 20 | DIRECT EXAMINATION                                       |  |  |  |  |
| 21 | BY MR. KUNS BERG:  |  |  |  |  |
| 22 | Q Mr. Gates, what percentage of inmates are eventually   |  |  |  |  |
| 23 | paroled before the end of their sentence in the State of |  |  |  |  |
| 24 | Connecticut?   |  |  |  |  |
| 25 | A More than 95 per cent are paroled at some time         |  |  |  |  |

during their sentences.

Q What percentage are paroled at their first hearing?

A I do not have that information. Approximately, on an average between all the institutions, approximately 70 to 75 per cent at each meeting.

Q Could you estimate the percentage that are paroled at their first hearing?

A It would be completely an estimate. I would say more than 50 per cent.

Q Thank you. On Pages 9 and 10 of Plaintiffs' Exhibit 1, which is the Statement of Organization and Procedures
of the State of Connecticut Board of Parole --

MR. O'NEILL: That's not Exhibit 1.

Q Pardon me. -- Plaintiffs' Exhibit 4, there's a listing of certain criteria which are used in determining whether an inmate should be granted or denied parole. Could you tell me how these criteria were selected?

A They were adopted by the Board originally in 1968. When this first statewide Parole Board was originated all the procedures, as well as the factors involved in decision process, were adopted by the Board at that time - after a period of study and by vote of the entire Board.

Q Would you describe the study?

A It was over a period of time. There was research done on it by then Dean Howard Sachs, who was a member of the

Board from the University of Connecticut School of Law, and other members of the Board.

Drafts were made, were provided each member of the Board. From that came suggestions. And finally the final draft was developed and was passed unanimously by the Board.

Q Are all these criteria considered in each case?

A Yes. Of course, you don't consider the criteria concerning narcotics if you're dealing with an alcoholic problem.

But basically they're all considered in every case, of course.

Q Are they all given equal weight?

A It's according to what you mean "equal weight."

No, they would not be given equal weight. Each case has to be taken individually. So that, for instance, a man's conduct in the institution, because of the type of conduct it was, might weigh much heavier than some other factor at that particular time.

If he came up another time and his conduct was different; why, the weight, of course, is different.

Q What determines which criteria is stressed at a particular hearing?

A No particular criteria is stressed. They're all taken into consideration. It's all a part of getting the whole pattern that the person involved in a decision has to

come up with the decision.

Perhaps I might state it this way: A person isn't just automatically denied parole because he has a long record. Neither is he automatically paroled because he has no previous record. But that's a part of the picture that goes in with all the other factors.

Q Have any studies been conducted to correlate these criteria with success on parole?

A No formal studies, no.

A part of the research on this was done, it had to do with other jurisdictions, and the history of parole, factors that have been used from time to time.

And the experience with parole - the Board, as I said, had the advantage of persons like Dean Sachs who had knowledge of the field, and some of us who have a lifelong career in the field of corrections.

THE COURT: Do you have such a background in this field?

THE WITNESS: I have been in the corrections field for thirty years as a Superintendent of Institution, as a chaplain, as a probation officer, as Chairman of the Department of Corrections which developed this new Department of Corrections in 1967, and then appointed this position after that, following that, your Honor.

Q (By Mr. Kunsberg) What is expected of the inmate at the hearing? 2 3 What is expected at the hearing? 4 Q What is expected of him? Expected of him? 5 A I don't think it's so much expectation, but it's 6 an opportunity, a two-way opportunity. 7 First, an opportunity for him to present everything 8 9 that he wishes to present on his behalf for parole consideration. 10 Secondly, it's opportunity for the Board to add to 11 its information which it already has from the document 12 material provided the Board approximately one week in advance, 13 14 It's an opportunity for the members to increase their knowledge by questioning the person, listening to him 15 16 and discussing subjects related to the person's release from 17 the institution and adjustment in the community. 18 Does the Board make any systematic attempt to make 19 consistent decisions in the cases of inmates with similar 20 factual records? 21 Will you explain what you mean by consistency? 22 Yes. Suppose inmates, in terms of these enumerated Q 23 criteria, have similar records, they have similar institu-24 tional performance, similar criminal records, similar parole 25 plans. Is there any attempt to parole them at the same date,

for similar offenses?

A Of course there is.

But if you mean consistency that way from that standpoint and you take all these factors and the relationship of these factors to different individuals, it's going to be unusual if two people answer all of them in the same way.

But, of course, the Board attempts to be consistent. And this is one of our goals: to attempt to be consistent - what I mean of consistency. And that is to be fair, to take into consideration all the information available concerning the man's past, his present and his future plans, and to fit all this information into the requirement of Section 54-125, which has one requirement in this state, and there's only one requirement in the statutes of this state as far as the Board is concerned: that the Board shall parole only when all the information it has as its command leads it to believe that the person will never commit another offense and his release is not incompatible with the welfare of society.

Q Have any studies been conducted to see if these goals are, in fact, being achieved - this goal of consistency?

A I don't know what you mean by "studies," but the members of the Board are continually reviewing their actions and the information that they use in their decisions, in an attempt to be consistent, if you want to use that word, but

I'd rather say in an attempt to make the correct decision.
BY THE COURT:

Q Well, you said earlier, Mr. Gates, that 95 per cent of the prisoners are paroled at some time. Right?

A That's correct, your Honor.

Q Do you have any records or information about the number of recidivists?

A I cannot give you information completely on recidivists, your Honor, which would mean in every person whether or not he ever was arrested again.

But I can tell you that in the seven and a half years of this Board we have had approximately 11 per cent failures on parole during the parole period.

We have found it necessary to revoke approximately l1-l12 per cent. Of those l12 per cent who are revoked, the violations of approximately 80 per cent include a new conviction.

But I think it's 11.8 per cent over the period of in excess of seven years whose paroles who have been revoked. This is the number of persons under parole supervision and services.

Q Having the background of that kind of experience, 11½ per cent revocations and 80 per cent of those, which would mean about 8½ per cent, I guess, of those you let out commit other crimes and get convicted, --

A That's right.

Q -- that has some bearing upon what judgment you're going to exercise in the future, right?

A That is correct, your Honor.

Q Are there national studies or wider studies indicating the extent of recidivism among parolees in the federal system, for example, or elsewhere that you know of?

A There are statistical reports. Yes, your Honor.

I don't have the statistics at the tip of my tongue.

Q I mean how are you doing? Are you getting more recidivists or fewer than other places?

A I would say that on the basis of our revocations in relation to the number of persons under parole supervision, that we have by far a smaller percentage of failures.

We have a larger per cent -- I think I should explain further, your Honor. We have a much smaller number of failures on parole. We have a larger per cent than is normal of those who fail who are convicted of new offenses.

In other words, the vast majority of our revocations are due to conviction on new offenses and not to violation of the rules of the Board of Parole.

THE COURT: All right.

#### BY MR. KUNSBERG:

Q Mr. Gates, when and where are the hearings conducted?

A The hearings are conducted in the institution where

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the person is confined, with exception. During the last two or three years numbers of men have been transferred to the correctional centers, formerly known as jails. There are no facilities there and due to the makeup of the Board and other problems, we transport them back to the original institution to which they were sentenced. On the day of the hearing we transport them back for the hearing.

Q And when are the hearings conducted?

A The hearings are conducted on a schedule which as administrator of the Board I make approximately sixty days prior to the hearing. We conduct hearings approximately sixty days prior to eligibility and we schedule the hearings approximately sixty days prior to that.

Q Is there an ongoing schedule of hearings?

A Every week. So that now I'm just scheduling hearings for November, to notify the men and women of their
November hearings. And these are primarily people who will
be eligible in January.

How are the hearing panels composed?

A The hearing panels are composed according to the statute 54-124(a) of three members assigned by the chairman.

And the full Board never sits on the hearings, as you know.

A panel of three members is assigned by the chairman and, according to the statute, that panel is the complete paroling authority for the cases it hears.

| 1  | Q How are the members of the panel chosen?                   |
|----|--|
| 2  | A How are they chosen?                                       |
| 3  | Q How are they chosen as members of the Board of             |
| 4  | Parole?  |
| 5  | A The chairman is authorized by the statute to choose        |
| 6  | them.  |
| 7  | BY THE CCURT:  |
| 8  | Q What do you do, just sort of spread the work around        |
| 9  | evenly?  |
| 10 | A There are many factors, your Honor.                        |
| 11 | Q In choosing a panel?                                       |
| 12 | A In choosing a panel.                                       |
| 13 | When the Board was first originated in 1968 we               |
| 14 | could conduct all hearings in the state in four days. It     |
| 15 | now takes from ten to eleven days each month.                |
| 16 | One has to take into consideration I take into               |
| 17 | consideration the experience of members, to be sure that     |
| 18 | there are at least more experienced members on each panel,   |
| 19 | as well as less experienced ones, according to time, because |
| 20 | the Board does change.                                       |
| 21 | Five out of the ten members have been changed by             |
| 22 | the governor this year.                                      |
| 23 | We have to take into consideration other things.             |
| 24 | These are part time people. I'm the only full time member.   |
| 25 | I've had times when some persons could not sit on Tuesdays,  |

or not on Wednesdays, or not on Thursdays. Some couldn't sit the first week or the third week, etc.

These problems had to be taken into consideration.

Plus the fact that I do not have any panel, except in a real emergency - this happened only a very few times in all these years - who does not have minority representation on it.

Q What do you mean by "minority representation"?

A I mean representing minority groups. Either to be at least one representation. Sometimes it's the majority the other way.

But I'm talking particularly from the standpoint of race and particularly the standpoint with the number of Spanish background people we have today, I only have one Spanish person on the Board at the present time. I try to fit that person in as much as I can. And members of the black race, etc.

THE COURT: I see.

#### BY MR. KUNSBERG:

Q What are the qualifications of a part time member of the Board?

A The qualifications of a part time member of the Board are simply stated in the statute, which is true of almost every parole board in the United States, I think - simply "... shall be qualified by training and experience."

Q Could you specify what, in fact, that involves in

the State of Connecticut?

A Well, there is nothing more than that, as far as the statute is concerned.

I can judge what I think are qualifications, but I don't have anything to do with the appointing of them.

- Q How are they appointed?
- A I have nothing to do with appointing.
- Q How are they appointed?

A They are appointed by the governor to four year terms and confirmed by either House of the General Assembly.

Q Mr. Gates, describe the sequence of events at a parole hearing in the State of Connecticut.

MR. O'NEILL: I'm sorry. I didn't hear that question.

Q The sequence of events.

Is the Parole Board hearing divided into discrete episodes?

A No. The person is brought into the room, is introduced to the members of the Board, and the members of the Board to the person, by name.

Normally, the Acting Chairman of the Board, who is assigned by me if I am not there - and I very seldom sit on granting hearings in the last two years or so - normally the Acting Chairman assigns one of the members to basically conduct the hearing. He doesn't conduct them completely himself,

although all participate.

And this person discusses with the man or the woman the things that have to do with the factors that are taken into consideration. And invites the man, many times first of all to make any statement before it's even started that he wants to make. And almost always concludes, no matter how much time is involved, with being certain that the person has said everything that he wanted to say.

- Q Is there a review of the file before --
- A And then -- may I just finish that?
- Q Yes.

A And then the person is excused from the room when the hearing is concluded. And the decision is made in executive session.

It's one of the few Boards in the country that does this - in order to call the person back in, whether it takes ten minutes, or an hour, or whatever it takes to make the decision; call the person back in before the next case and inform the person orally as to the decision.

If it is a denial, to give them the reasons for the denial. Then this concludes the hearing.

Also if a person is denied, to tell him when he is to appear before the Board again.

Then the last few months, particularly at the request of the men at the Somers institution, we had always

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given written reasons. Even the old Boards, when I sat on the old Parole Board when the administrator of institutions set with the Board of Directors many years ago, as a Parole Board member, we always gave written reasons for denial. But when we ceased that --

THE COURT: What do you mean?

THE WITNESS: We sent them written reasons after the hearing of denial.

THE COURT: You still do that?

THE WITNESS: We stopped it in 1970 because of our discussions with particularly the men at Somers, of the difficulty of doing that, and started to take the time.

This is one thing that increased our number of days of hearings, to take the time to call them back in and give them the reasons and discuss the reasons with them.

But as I said, in recent months there has been a great many requests for written reasons. So that now the Board's policy is to give both oral reasons at the hearing and to inform the person at the hearing that within ten days I will also send them the reasons in writing.

#### BY MR. KUNS BERG:

Is there a review of the file before the hearing;

preliminary to the hearing?

A By the members?

Q Yes.

A The members are expected to read it, and read it thoroughly. And each one is provided with an identical file at least one week prior to the hearing.

Q Do you know how much time they actually devote to reading these files, on the average?

A I could not say, except that I've had numbers of members tell me that they spend more time in reading a case, each case, than the time of the hearing itself.

Q How long does the interview with the inmate last?

A It may go any length of time. In some cases it's short, it might not be more than ten minutes. I've had hearings that have gone two hours.

Q So what is the average duration?

A I would say twenty to thirty minutes.

Q What is the average duration of the period during which the Parole Board deliberates?

A 'I don't know whether I could average that or not.

Some cases are easy. You have a first offender, he's had a good institutional adjustment, has a good plan to go out, has been involved in the program of the institution which is pointed toward his particular problem. That might not take five minutes.

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On the other hand, I've seen cases where I sat years gone by where it may have taken an hour or longer.

Q What sort of information does the Board rely on?

The Board has, first of all, in the file the presentence investigation, the orientation diagnostic report at the institution which is completed after the person has been at the institution during the orientation period, the progress report which includes some more or less statistical information such as sentence and eligibility date and appearances before the Pardon Board, any warrants or any other charges awaiting intigation, the actions of the Classification Committee which assigns the man in the institution as far as custody is concerned and employment, etc., the conduct record of the person with information on each misconduct if there has been misconducts, the work record where the person has worked, his adjustment on each of the jobs, whether or not the person has been out on furloughs, whether or not the person is on work release, the medical report, the educational report of the education program participation, the so-called social section which has to do with family relationships and visits, correspondence, and this type of information.

In addition to this the file includes, where the Board requests it, psychiatric evaluations, which on certain types of cases the Board does request psychiatric evaluations.

Also in some institutions it includes team reports.

### THE COURT: What?

A Treatment team reports. Because at one or two of the institutions they have treatment teams working with the men, particularly at Enfield. And we have the advantage of that staff, or those staff reports.

Then there is, in addition, every piece of information that comes in, whether it be positive or negative. I'm talking now about correspondence from attorneys, sometimes from Courts - very seldom - from persons interested; friends, families, relatives.

Any type of correspondence, pro or con, that comes in, a copy of it goes into each of the file for each member of the panel so that they have this at the time of the hearing.

In addition, in many of the cases there's a memorandum for me, a fairly complete memorandum, concerning a hearing that I've held at the office. Because each man is notified at the time he's notified of his hearing, he's notified that it's not possible for the Board and not the Board's procedure to have attorneys and witnesses at the hearing, but that attorneys and witnesses may appear before me prior to the hearing, at a time which will be established mutually convenient. Then a complete memorandum is made of that conference and is provided in each one of the files at the hearing.

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BY THE COURT:

Q Now, wait a minute.

You have a meeting with the prisoner prior to the scheduled hearing?

A No, not prior to the scheduled hearing.

I have a meeting with the person's attorney, family, friends - anyone who is interested in the case who wishes to be heard.

Q Well, how do you know who they are, or how do they know that such --

A The only way they know is through the notice that we give the man when we give him the date of his hearing.

It is explained on there that the attorney and witnesses cannot appear at the hearing, but tells them now to set up this procedure.

THE COURT: I see.

Is that in evidence?

MR. O'NEILL: No, it isn't, your Honor.

Maybe it should go in at this point.

THE COURT: Yes.

Do you have any other exhibits?

MR. O'NEILL: We will later on.

THE COURT: All right. Make it Defendants' A,

I guess.

You're using numbers?

not be answered by written material

MR. KUNSBERG: Yes, your Honor.

THE COURT: Exhibit A.

(Defendants' Exhibit A: Connecticut Board of Parole agenda, marked full exhibit.)

A I think I've completed.

Then in addition to this, I think I should state, in addition to this information this Board puts a good deal of importance on seeing the person and having a chance to discuss with this person the information which it believes is important. This is the reason that we place the emphasis upon the hearing. And although a man has a right to waive a hearing, our procedures state that the Board prefers that a person does not waive a hearing and appears before the Board.

Q (By the Court) Well, now this meeting that comes about following your notice to the prisoner, that doesn't occur in every case?

A No, not in every case. But --

Q Quite frequently?

A Very frequently, I think. For instance, I had four Monday, I had two yesterday, and three the day before.

Q Percentagewise: half, 25?

A Your Honor, I don't believe it would be half. It probably would come to 40 per cent or so.

It fluctuates a great deal. At times we're swamped

addition to the compilation of it, which is in these various

elements that I've described, we have the master file of the

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institution present at the hearing. And it is the policy of the Board's secretary to check with that file all statements, and at times there is found to be some error.

THE COURT: Some error?

THE WITNESS: Well, for instance, the date of eligibility, the terminology of the sentence. Because that file would include, where we would have the statement from the institution, that the person's offense is such and such.

The mittimus, itself, is in the file. And there have been occasions where Mr. Reddington, the Board Secretary, during the hearing has found that the man is right when he said, "Well, that's not what I'm here for. I was charged with that, but I pled to something else." And so care is taken to see that the information is valid.

## BY MR. KUNS BERG:

Q What sort of care? Do you rely on the inmate to correct these errors?

A 'No. I said that our Board Secretary spends a great deal of time in this process. And he has checked the files previous to the hearing ever being established, because it's his responsibility to check the file and to recommend to me whether or not a psychiatric evaluation should be requested prior to the hearing.

#### BY THE COURT:

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Well, you have a case like that where your check will reveal that the particular crime for which he was sentenced is of less severity, less turpitudinous we will say, than one with which he was charged. That happens?

It has happened. But, of course --

A plea bargaining and they plead to a lesser offense, right?

A Yes.

Now, when that happens, what weight, if any, do you give to the fact or do you give to the information that he was charged with a more serious offense?

Well, your Honor, it could be more serious or less serious, according to the plea bargaining process.

But the fact is as long as the sentence is correct, the time is correct, that is not too important as far as our process is concerned because we have the pre-sentence investigation that describes the offense.

A man may have been charged, for instance, with aggravated assault and may have pled to breach of peace. But we would have to take into consideration the factors involved in breach of peace which were the factors in the aggravated assault.

THE COURT: All right.

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BY MR. KUNSBERG:

Q Describe these psychological reports that are obtained by the Board.

A They're psychological and psychiatric.

The institution has a Psychiatric Department.

All the psychiatrists are very well known psychiatrists, and mainly in the Hartford-New Haven area, who serve the institution on a consultant basis of so many hours a week.

And Mr. Reddington goes through all the files prior to a hearing being scheduled and, in certain types of offenses which the Board has stipulated, requests that prior to the hearing there be a psychiatric evaluation.

In some of these cases people are already under psychiatric care. In other cases, because of the type of offense, we feel it's necessary to have an evaluation. They are done by competent professionals, not members of the staff, but psychiatrists who are on a consulting basis.

Q Is the inmate given notice that the findings of this psychiatric interview may be used at his hearing as evidence?

A He is not.

Q These files are very compendious. Are certain elements of the file stressed more than others? Is certain information considered more significant?

A I cannot answer that.

In some cases, of course, certain information would

be more important than other information, according to what the problems are with the person, his history, both past and present.

It would be impossible -- parole cannot be done on a flat -- if you want to use the word "consistent," I don't like the term, but take every one and take all armed robbery cases and make the decision the same, and all burglary cases and make the decision.

It has to be done, if it's to be effective at all, on each individual man and his parolability, in relationship to the requirements of the statutes of Connecticut.

Q When the inmate is notified of the reasons for a denial of parole is he notified of all the reasons?

A He is.

Q So that no factors other than those mentioned in the Statement of Reasons would be detrimental to the inmate?

A I don't know what you mean by "factors," sir.
When you say factors, you mentioned reasons and --

Q Reasons.

A There are reasons that the panel comes up with in their executive session that are compiled and the person who conducted the hearing gives those reasons to the person when he comes back in.

BY THE COURT:

Q And then that's later incorporated into a written

notice?

A Later I write a letter to the man and repeat the reasons.

Q Well, how do you know --

A I will stipulate, however, that until the last four or five months it was done only when we were asked to.

Q How do you know what the reasons are?

A Because Mr. Reddington, the secretary of the Board, is my administrative assistant. We work together. He comes back with the records. It's his records that I have.

And he has, with the members, taken them down at that time. It is his responsibility as Secretary of the Board to make the record of it.

Q He does that at the time during the panel's consideration of their decision, or at the time the chairman of that panel announces the reasons?

A He does it at the close of the decision, your Honor, prior to their reading them to them.

Then he also places a copy of that in each of the four files of the four members, so that the next time the man comes up for parole the files include those reasons - sometimes with some explanation. But normally the reasons 1, 2, 3, 4 - whatever they are.

BY MR. KUNS BERG:

Q Mr. Gates, are you aware of the federal parole

A Yes.

Q Has the Connecticut Board of Parole considered promulgating similar guidelines?

A Not from the use of that chart and procedures. We have discussed, upon a number of occasions, that many of the factors that they use are very much the same as we use because they're all part of that procedure - certain uniformity to them.

But as far as using them with the weights that they use, no, we have not.

I was involved in the compilation of those in the national conference that set them up. But we have never, per se, put them into effect in Connecticut.

BY THE COURT:

- Q Why not? Do you have a criticism of them?
  You're among friends. Go ahead.
- A I have some. I think they are limited.

I think that there's not enough flexibility. In them and I think there have been some legal cases on that.

I think it's hard - whether it's right or wrong,

I think it's hard to put this decision process down in a

mathematical formula. And that's primarily what that process
is.

I agree with many of the factors - and I said I

participated I think it was three workshops in setting that up in various parts of the country. I don't disagree too much with the factors, but with the way that they're used.

BY MR. KUNSBERG:

Q Have you considered providing the inmate with a tentative date of parole?

A When, sir? When provided, I mean?

Q Presumably at the point of eligibility these factors could be considered and the inmate could be provided with --

A Anyone that isn't paroled immediately, give them a date?

Yes. And we've experimented somewhat with it. In fact, the Board quite often now will give what's called an extended date, because of various reasons.

We'll say that your eligibility date is October

31st, but because of various reasons explained we're going
to parole you as of February 1st. That is done upon a number
of occasions.

THE COURT: You mean later than the date of eligibility?

THE WITNESS: Later than date of eligibility.

THE COURT: The eligibility date is determined by statute?

THE WITNESS: By statute. By the expiration of the minimum sentence on the men at Somers.

The indefinite sentences at Cheshire and at the women's institution are indefinite sentences, which we have authority to parole at any time.

Q (By Mr. Kunsberg) Do the reasons given by the Board indicate the weight attributed to those reasons?

A They do not. With the exception that -- and this would not be explained -- with the exception that I'm certain that the most important reason would be given first.

But there's no effort, as far as I know, to give them according to the weight.

Q Does the Board set specific goals for an inmate which if achieved might entitle him to parole at a future date?

A At times, in certain types of cases.

A narcotic man's participation successfully in one of the narcotic programs, alcoholics in an alcoholics program, educational programs or vocational programs.

I've seen just recently cases where panels denied a man -- has extended the date of a parole because of the MDTA program, which is a vocational program training brick-layers, and plumbers, and this type of thing. Paroling a person, but extending the date for the completion of that program, with the understanding that - and all paroles are always with this understanding - that it's expected that there shall be satisfactory adjustment and a satisfactory record by

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the man is continued until the time of his release; that he doesn't just quit after he's been voted parole.

If the inmate achieves these goals that are prescribed for him is he deemed entitled to parole at his next hearing?

I don't know. I want to discuss "entitled."

In that type of arrangement, of course if he carries out what the Board instructed him to carry out. Of course.

There has to be some thought at times -- I don't think this particular Board, and our Board has changed somewhat, as I said the last couple of years -- there has been some thought at times as to whether the Board should, wherever possible, when it denies a person, give them a definite parole date.

There are a number of these problems, sir, that have been difficult to solve to some extent because of the part time nature of the Board and the fact that the Board members' time, most of the time that they have to give to this work has to be taken up with the hearings.

This has prevented -- we made a number of changes over the years in these things. But this had something to do with preventing some of the changes we have made so far. I think one of our future studies will undoubtedly be on whether at the time of denial either a date should be set for parole or --

#### BY THE COURT:

Q So if you deny him parole, how can you set a date for parole?

A Well, this is one of the problems that I have.

There are Boards that do this. The federal Board does it.

Q Deny now, but we will parole you a year from now?

A Well, from that standpoint, that's what it is.

It may not be denial at the present time, but if you parole
a man eight or ten months from now you're really denying him
now. It may not be termed that, but that's what the decision
really is.

Q Well, this is a deferred parole date. You're granting him parole at a deferred date, on condition that the favorable conduct continues, is that it?

A Yes, that's correct.

Q That's what you're talking about.

A One of the problems that I have with that process is that how long a man can carry a parole in the institution before he gets out.

At one time we were conducting the hearings three months prior -- from three months to almost four months, ninety days to a hundred twenty days, prior to eligibility.

And we found that in one institution, the Enfield institution at that time, that more than 50 per cent of all the misconducts

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being committed in that institution by the total population were committed by people in this pre-parole release period. They've been voted parole, but --

They had the diploma, but they weren't out of school yet.

But weren't out.

Consequently, we cut down to sixty days. We feel that's necessary to make all the arrangements to be made. But there is a problem here.

BY MR. KUNSBERG:

Mr. Gates, is it ever determined by a review of the files prior to the hearing that an inmate will be denied parole?

Never, as far as I know.

In fact, I would say that it's probably been between thirty and forty people on this Board in eight years -- maybe that's a little large, thirty -- and my experience with them has been that they go to the hearing wanting to parole the person.

This Board is the most liberal Board with paroles, I think, in the United States. We parole, I think by far, a larger percentage than any other board. We've been criticized for it. We stand on our record of success during the parole period.

I think the Board members go there - I'm certain

that they do - first of all wanting to parole; not wanting not to parole, having had it proved that the person should be paroled.

And no decision is made - in our indoctrination period we emphasize that no decision should be made prior to the hearing.

THE COURT: You mean that's to your panel members?

THE WITNESS: Yes, panel members who review the case.

Q (By Mr. Kunsberg) Are certain questions reserved for resolution at the hearing?

A I beg your pardon, sir?

Q After this preliminary review of the file, do certain questions occur to the Board and are they reserved for some kind of determination at the hearing?

A I'm certain there are. I'm certain there are.

MR. KUNSBERG: Thank you.

Thank will be all, Mr. Gates.

A May I go further and say sometimes the questions are asked before the hearing, if they have to do with subjects that could be answered before then. There may be a request of me, a telephone call, concerning a question.

Of course, the Board expects that certain questions will be able to be answered by the man, himself, that could

not be answered by written material.

MR. KUNSBERG: I see.

Thank you.

#### BY THE COURT:

Q One more thing. There's no doubt that you do have applicants for parole who are disappointed by the fact that they are not granted parole?

- A Yes, sir. I would be, too.
- Q Of course. That's natural.

Now the question is are there many within that group who are denied parole, who contend that the action of the Board is made on misinformation or error in your records, claiming that you relied upon something that was inaccurate?

A Not on that contention. Most of the complaints that are based on anything other than just having been denied are on the procedures of the Board.

- Q In what respect?
- A In not allowing attorneys and witnesses to be present, and so forth.
- Q Now, witnesses to be present, do you have some idea as to what the purpose of having witnesses present is?

A Well, I believe that the men and women believe that they could present information which would be favorable to them.

Q To speak in behalf of the prisoner?

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A Yes, that's right.

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Q. To say something favorable about him.

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But these witnesses, do you understand them to be witnesses to controvert the accuracy of some of the information in your records? Do they take issue with what you have relied upon, rather than try to present something you have

Well, it hasn't been brought to my attention.

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complaint that I've received.

The complaint that I received, the Board has concepts not only from the logistics of conducting the hearing,

I think it's possible, but that has not been the type of

but as to why it's closed. It has some very definite reasons

Q Yes. All right.

for it in its own thinking.

A But the complaints that we get are basically that information could be given by these people. They could be assisted in presenting -- the attorney could assist the man in presenting his case and the witnesses could provide information.

Q That is something that you don't know about and is not reflected in your record, right?

A We've tried to cover that, as I mentioned before, with procedure in which we notify each person what they can do

to get this information to us.

- Q In advance of a hearing?
- A Yes. This is the basic complaint.
- Q Not that your records are inaccurate?

A I think the basic complaint is that they were denied.

And it would be mine, too. But this is the manner in which

it's brought up.

MR. KUNSEERG: Your Honor, in reference to this point, plaintiffs offer to prove today that, in fact, there was erroneous factual information often before the Board and that plaintiffs did not have --

THE COURT: Has this ever been brought to the attention of anybody before this hearing, what you claim to have been inaccurate in the record?

Does anybody know what the issue is, outside of you?

I mean have you ever told Mr. O'Neill or have you ever told these defendants that they acted on some erroneous information in the record, and what that erroneous information is claimed to be? Or is this a surprise now that's going to be opened for the first time at this hearing today?

MR. KUNSEERG: Well, your Honor, I think it's not only erroneous, in other words many of these things came out in the hearing --

THE COURT: We're talking about one thing.

Just put your mind on one thing that you say was erroneous in a record, and now these witnesses or a witness wants to show that something in his record that the Board acted upon was erroneous and he didn't get a chance to show it.

Have you got such a situation?

MR. KUNSBERG: Yes, we do, your Honor.

THE COURT: Is it something fairly critical?

MR. KUNSBERG: Yes, we think so.

THE COURT: Has it ever been brought to anybody's attention for the defendants? Do they know what they have to meet in this respect?

MR. KUNSBERG: No, it hasn't, your Honor.

THE COURT: I think we will take a recess and I think you will make whatever fact you claim was erroneous known, so we will know what it is about, instead of playing games here at the expense of everybody's time.

MR. KUNSBERG: Your Honor, our position is not so much that it was this particular mistake that was critical, but that the procedures employed prevented these mistakes from being corrected in a systematic fashion.

THE COURT: All right. Let's find out.

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Open it up, see what it is, how significant it is, and how it came about. This will have some bearing upon your general claim that there ought to be a right to examine this record beforehand and a right to cross-examine with respect to everything that's in the record - which is one of the things you're claiming you are entitled to as a matter of due process. Right?

MR. KUNSBERG: Yes, your Honor.

THE COURT: Okay.

You followed that, did you, Mr. Wizner?

MR. WIZNER: Yes, I did, your Honor.

THE COURT: All right.

So we will take a short recess.

(Short recess.)

MR. KUNSBERG: Your Honor, the issue which I referred to before was the case of an institutional infraction which the inmate was charged with and convicted of by an adjustment committee --

MR. O'NEILL: Disciplinary committee.

MR. KUNSBERG: -- disciplinary committee in the prison. He has evidence that he was not guilty of that offense. It was mentioned at his hearing and he neglected to -- he did not contest that charge at the hearing.

We do not wish to press that issue at this point. We offer to prove solely that there were factual issues that were critical and that were reserved for resolution at the hearing, and that the inmates were not afforded an opportunity to address those issues due to the lack of certain procedures.

For the purposes of that showing we would examine the three members of the Board of Parole that presided at each of those hearings and would request permission to brief the case.

THE COURT: You have examined them, you say?
Taken their deposition?

MR. KUNS BERG: No.

If your Honor feels it would be fruitful, we would examine them.

MR. WIZNER: Perhaps we would be more specific about this. The instructional infraction with which Mr. LaBonte was charged, one of them was being intoxicated on the grounds of the prison - which is obviously not something which is looked upon with great favor, either by the Parole Board or the institutional authorities.

Mr. LaBonte, at his hearing, just wasn't able to get it out that he wasn't intoxicated. In fact,

he has evidence, a blood test, that he was not intoxicated at the time. So that his conviction for this disciplinary infraction within the institution was erroneous.

THE COURT: What was he intoxicated with?

MR. WIZNER: He wasn't intoxicated at all.

MR. KUNSBERG: He was feeling ill, your Honor.

MR. WIZNER: Other than with his desire for liberty.

THE COURT: This committee you talked about, what kind of an institutional committee is that who conducted a disciplinary hearing?

MR. O'NEILL: I take it he got a misconduct report at the prison for intoxication, at a hearing before a disciplinary committee. We've been in court before your Honor on due process at those hearings.

He was found guilty of being intoxicated and that disciplinary report later was filed. At that point, obviously, he could have brought an action in the federal court, as many prisoners have done, challenging that hearing itself, that disciplinary hearing.

Instead, as I understand it, he did nothing.

He went before the Board of Parole, allegedly having

a blood test in his possession showing that he was not intoxicated. When the panel members of the Board of Parole asked him about this infraction, he didn't say "I didn't do it," or "Here I have a blood test showing that I wasn't intoxicated." He just agreed that he had done it. He didn't alert the panel or make any claim that he was innocent of this.

So, naturally, the panel just took it that he had committed this infraction. This is almost like sort of mousetrapping the panel.

MR. KUNSBERG: Your Honor, that is correct, except for the fact that he had initiated court proceedings.

He did not inform the Board of those court proceedings because he assumed that they would deem him to be lying. And this may be a kind of subjective impression of the inmate, but we maintain that it is due to the whole atmosphere of parole hearings that an inmate feels he can't express himself, that he would be unable to present a coherent argument, and so forth, to contest the charge and, therefore, that is why he didn't mention it.

So that is the substance of that charge. As I

said, we don't intend to pursue it. But we would like to show that there were critical factual issues at each of the hearings.

THE COURT: All right. That's where we were a minute ago.

What critical factual issue are you talking about, in whose particular case?

MR. KUNSBERG: For example, the Board is obviously interested in mitigating circumstances around an offense that were surrounding an offense. For example, an escape - Mr. Studley's escape.

On the record that seems like a very serious offense. Yet perhaps if they had been able to inquire more fully into the circumstances of this offense they might have made a more favorable decision.

As it was, Mr. Studley wasn't able to inform them that one of his escape offenses involved getting very nervous in a courtroom, running out the door and being caught two blocks away. We consider that a less serious offense and it's kind of systematic --

THE COURT: You mean that he allowed himself to be caught before he got more than two blocks away?

MR. KUNSBERG: It was basically he was in a state of nervous anxiety. We don't think it's a serious --

THE COURT: But it was an escape, nevertheless.

It's no excuse, is it?

MR. KUNSBERG: No.

THE COURT: Well, I don't understand then what we're talking about.

MR. KUNSEERG: Well, what we're talking about -THE COURT: That he got nervous. Courtrooms
frighten him.

MR. KUNSBERG: Well, the Board has contended that they do consider such things, that they are relevant to the parole decision.

THE COURT: He was there at the hearing. He had an opportunity to say: "You know this escape, I was really just uptight and I just ran out, without thinking."

He could have said that, couldn't he?

MR. KUNSBERG: Yes, he could have.

As a matter of fact, Mr. Studley, in particular, couldn't have because he has very limited verbal skills and if he had been assisted by some sort of representative at that hearing he could have brought forward that information.

THE COURT: Well, he had a chance before the hearing to send somebody in, or to go in himself, to talk to the Chairman of the Board and say:
"Now this is what happened. You've got a record of my escape, but you're blowing that up out of all proportion if you figure I'm an escape artist or really trying to avoid paying my penalty.
That's just all a mistake."

There was a chance to bring that information to the attention of the Board.

MR. KUNSEERG: The problem with that, your Honor, is that he has no access to his files. He doesn't know whether there are --

THE COURT: He didn't know he was convicted for escape?

MR. KUNSBERG: Yes, he does.

THE COURT: Well, he knows that's in his file.

He wanted to give an explanation of that.

MR. KUNSEERG: The emphasis of the Board is so variable, your Honor, that at certain hearings --

THE COURT: Now, wait a minute. Forgive me.

We are getting into the argument stage instead of the presentation of facts stage.

Again as in the case of the prisoner who was intoxicated by the smell of new mown hay up on the

farm we can assume, you know, that this is the kind of information you would present and consider as having been presented.

MR. KUNSBERG: Yes, sir.

THE COURT: But the circumstances that we're concerned with in this case is whether or not there was a denial of an opportunity to bring that information before the Board at the hearing. That's what we're talking about here. And a due process protection is some procedure which would enable him to do that.

Now as to what you have related, it indicates only that it wasn't brought to the attention of the Board and he didn't know, or he was afraid, or for some other reason had not expressed to the Board, or didn't try to bring it to their attention. Is that right?

MR. KUNSBERG: That's correct.

THE COURT: All right.

So I don't think that you have anything relevant there to the issues which are presented here as to the due process requirements, unless you're going to say that each one of these ought to have some counselor or --

MR. KUNSBERG: Yes, that is what we're saying.

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THE COURT: -- or a specially assigned lawyer to hold him by the hand when he goes in and make sure that he voices everything that he thinks he has a right to.

MR. KUNSBERG: Not necessarily a lawyer or a court-appointed counsel, but a representative, a friend or member of the family.

THE COURT: Okay.

That's a contention you can make. You don't need evidence for that.

Now, there is one point on which we do need evidence, though, before we get away from it. Is it Mr. LaBonte who claims there was a personal prejudice?

MR. O'NEILL: Holup.

THE COURT: Holup.

We will take his testimony. Has he got anything to support that, other than he feels that there was prejudice against him? Is there any hard evidence of any kind?

MR. KUNSBERG: No, your Honor.

THE COURT: Well, just what is the basis for the claim, then? I mean what sort of support do you have for it, other than the fact that because he was denied parole he feels he was a victim of

personal prejudice by some member of the Board?

This would be a member of the panel, I assume.

MR. KUNSBERG: Yes.

THE COURT: A particular member?

MR. KUNSBERG: All three members, your Honor.

THE COURT: All three members.

Those are the members who are here today?

MR. KUNSBERG: Yes, your Honor.

THE COURT: Now, do you have something?

MR. KUNSBERG: We have two bases for that allegation. One is that the manner in which the hearing was conducted resembles an adversary interrogation about an issue which could not --

They were questioning him about an inconsistency between his guilty plea and his protestations of innocence to the psychologist. They had that information before the hearing.

It seems that they were uninterested in his explanation of it. Yet they devoted almost the entire hearing to an interrogation on that issue.

I think that that is apparent from the transcripts. I don't think we would need to submit further evidence on that.

THE COURT: All right. I'll consider it from the transcript, then.

You have no objection to that?

MR. O'NEILL: The transcripts are in evidence, your Honor.

THE COURT: All right.

MR. O'NEILL: We have the three members of that panel here at counsel's request. They don't have to get on, but I would like it agreed that if these members testify, that they would swear, under oath, that their vote with regard to Mr. Holup's parole was in no way influenced by any bias at all, or any fact that he was a writ writer.

I mean they would swear under oath, they would testify under oath to that.

Is that agreed?

MR. WIZNER: We wouldn't expect them to admit bias, certainly not.

We admit if they testify they will deny it.

MR. O'NEILL: Well, they will do it under oath.

THE COURT: That's if they testify.

So we can take that for granted, then. We don't need to spend time --

MR. O'NEILL: As a matter of fact, to my knowledge, Mr. Holup is not a writ writer.

THE COURT: What?

MR. O'NEILL: Mr. Holup has never brought an

action against the Department of Corrections, the Board of Parole, or any other state agency that I know of.

One of his claims is he was denied a parole because of his legal activities. To my knowledge, he's never even brought an action against Commissioner Manson.

THE COURT: Well, you don't know everything that goes on between Mr. Holup and me. I think I've had correspondence from him on more than one occasion and he's brought some actions here.

MR. O'NEILL: But not against the Board of Parole.

THE COURT: He hasn't collected any million dollars yet from anybody, but he's brought some actions.

MR. O'NEILL: Also I would like to note, just to nail one point down about Mr. Studley's claimed need for assistance at his Parole Board hearing on his charge of being intoxicated.

MR. KUNSBERG: That was LaBonte.

MR. O'NEILL: LaBonte.

Perhaps it is agreed for the record that at the disciplinary hearing Mr. LaBonte is afforded the presence and assistance of a counselor at the

and arrit the man can be

It might have something to do with the decision,

| 1  | disciplinary hearing arising out of that incident.  |
|----|---|
| 2  | We did have staff assistance at one point.          |
| 3  | He doesn't have a counselor at the parole           |
| 4  | hearing.  |
| 5  | But before a disciplinary board he did have         |
| 6  | a counselor, or he had the opportunity to have.     |
| 7  | And your Honor may take judicial notice of that     |
| 8  | from other cases.                                   |
| 9  | THE COURT: I'm a little curious. Would you          |
| 10 | regard a prisoner who had been found to have become |
| 11 | intoxicated in the prison                           |
| 12 | Where was this, at Enfield?                         |
| 13 | MR. O'NEILL: In Enfield.                            |
| 14 | THE COURT: At Enfield.                              |
| 15 | Would you give him a plus for the initiative        |
| 16 | he showed in being able to find something to get    |
| 17 | himself intoxicated, or would that be a black mark  |
| 18 | against him?  |
| 19 | THE WITNESS: Your Honor, having been super-         |
| 20 | intendent at that institution, I don't think I      |
| 21 | would give him a plus.                              |
| 22 | But I think that I am certain that no person        |
| 23 | would ever be denied parole only on that basis.     |
| 24 | There would have to be other factors.               |
|    |   |

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but no man would be denied parole just because he had that one report.

THE COURT: Okay.

MR. KUNSBERG: Your Honor, one further thing.

THE COURT: Sure.

MR. KUNSBERG: We intended to call each of the members of the particular panel that sat on these particular hearings to show two things:

First, we would like to address the issue of their qualifications as members of the Board of Parole; and, second, we would like to establish that there were critical factual issues that were to be determined at the hearing.

THE COURT: Well, now, you keep saying that.

I've asked several times what are the factual issues
before the Board that were critical. In which case?

You have one you mentioned about what was in his mind when he escaped, and another about the fact that he wasn't drinking anything intoxicating. What other factual issue are you talking about?

MR. KUNSBERG: Well, for example in Mr.

LaBonte's hearing, we'll start with that. There

were theories propounded by the Board as to the

motives for his actions; that he had a tendency to

demonstrate aggressive behavior in the presence of

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females, and so forth, and that these were considered reasons which contributed to the likelihood of his violating parole.

He denied these suggestions at the hearing.

THE COURT: Yes.

MR. KUNSBERG: And we believe that --

THE COURT: You say there's no basis whatsoever in the file that was before the members of the panel for inquiring, or even discussing or going into that kind of an issue?

MR. KUNS BERG: No. Indeed, there was basis.

THE COURT: What's the basis in the file?

MR. KUNSBERG: Presumably the psychiatric reports.

THE COURT: Well, you challenge the accuracy, or the honesty or the professional competency underlying the psychiatric report?

MR. KUNSBERG: No, we don't, your Honor.

MR. O'NEILL: It's also in the pre-sentence, as well, your Honor.

MR. KUNSBERG: What we do challenge is that

Mr. LaBonte had no access to those reports prior

to the hearing, that he didn't know that these

issues were going to be raised at the hearing, so

he could not prepare it to meet them.

Moreover, he could not have --

THE COURT: Well, he was asked about them, wasn't he?

MR. KUNSBERG: At the hearing.

THE COURT: Yes.

So it wasn't kept secret from him. The information was brought to his attention. The reasons for their action was given. The basis of their information has been disclosed.

Then you're getting beyond that. You say,
well, when that happens he has the right to make
a full case out of that issue. Is that the point?

MR. KUNSBERG: At least to prepare some evidence which he might introduce to contest it, yes.

THE COURT: All right.

Do you have an offer to make as to some kind of evidence he could have prepared and introduced?

Just what is it he could have done, this man?

Who is it?

MR. KUNSBERG: LaBonte.

THE COURT: What could he have come up with?

Of course, it's much later now, he's had a lot

of time to think about it. So has counsel. Just

exactly what is there that he could have come up

with that would have shown that this was unreliable

information in the hands of the panel?

MR. WIZNER: At the time of the parole hearing, your Honor, if I may interject, Mr. LaBonte had filed a federal action challenging the decision of the disciplinary panel with reference to the issue of intoxication.

He tells me that Hubert Santos was his attorney at that time. So he went to the hearing and there was an action pending. He tells me that when he got into the hearing the fact that there was an action pending, and he thought they wouldn't believe him anyway, and he was confused and he didn't know what to do.

So he has the papers with him. The offer of proof would be the legal papers he had filed prior to the hearing and the blood test report on the intoxication issue.

THE COURT: All right. Now, we had gone beyond.

You were talking to Mr. Holup. We had gotten

to the point where we were talking about Mr.

LaBonte's aggressive behavior in front of women.

And you say he could have prepared something to

contradict or show the unreliability of the

psychiatric report and the pre-sentence report with

respect to that characteristic.

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What is it that you had that you could have presented, and what is it that you've got now that you can present, other than his own statements again that he's not that kind of a fellow?

MR. KUNSBERG: Nothing in terms of documentary evidence, your Konor.

THE COURT: Then this is all just sort of hypothetical, isn't it?

I mean that he could have done something to make a case out of it. But you don't have anything to support the fact that there is a reasonable basis, or that the Board's basis was unsound and unreliable.

MR. KUNSEERG: Presumably he could have obtained letters from other psychiatrists.

THE COURT: Presumably. But --

MR. KUNS BERG: We don't have that.

THE COURT: We don't have anything. You know.

MR. KUNSBERG: Also there's a vice, your Honor.

On the one hand, they have these amorphous criteria
in which they can select and stress in an apparently
arbitrary manner.

The inmate enters the hearing and he's totally surprised at what issues are brought forward. He could have prepared a thorough case on all of the

nine criteria, and then found something such as this theory has become critical, or Mr. Holup's inconsistent stories --

THE COURT: All right.

I mean this is an argument that you are entitled to some kind of specification beforehand of adverse factors in the file, in order to be able to prepare to meet those and contest them, right?

MR. KUNSBERG: Yes.

THE COURT: That's part of your contention, that due process requires that. Is that right?

MR. KUNSBERG: Yes.

THE COURT: We can assume then, or take it for granted, so far as your case is concerned, that in this case that opportunity was not afforded Mr. LaBonte to know that there was something in his file that would be an adverse factor in the Parole Board's consideration, right?

MR. KUNSBERG: Correct.

THE COURT: And it was a denial of due process not to let him know about it beforehand so that he could have prepared?

MR. KUNSBERG: Yes.

MR. WIZNER: Your Honor, a specific example of

that occurs in Mr. Holup's case.

Mr. Holup came into the hearing wearing on his shoulders the mantle of 120 days of meritorious good time for working in the library and doing other good things, confident he would receive parole.

When he arrived at the hearing he found the fact he had denied to the osychiatrist that he was guilty, even though he had pleaded guilty in a plea bargaining process, was the issue at his hearing. And when your Honor reads the transcript you will see that that was the issue at his hearing.

So he was totally unprepared for the hearing.

MR. O'NEILL: It wasn't the only reason for denial.

THE COURT: He did have an examination by a psychiatrist?

MR. WIZNER: That's right.

THE COURT: And that was at the instance of the Board. They said this is a fellow who ought to have a psychiatric examination because he has this certain thing that leads to certain conduct when he's in front of women. So we'll have a look at him.

Now, he pled guilty to what? Do we know?

MR. KUNSBERG: Yes.

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THE COURT: And you say he was surprised that the Board had asked him, "How come you denied this when you pled guilty to it?"

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MR. KUNS BERG: Yes.

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THE COURT: He was surprised?

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Why would he be surprised? I don't understand

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that. I mean this is all open. He knew that the

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psychiatrist was going to make a report.

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MR. KUNSBERG: No, he didn't.

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THE COURT: He didn't know that?

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MR. KUNSBERG: No, he didn't.

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Moreover, he assumed that these other factors

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would be relevant - the factors listed.

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He looked at -- I don't know specifically

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whether he looked at this book --

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THE COURT: Well, I'm not so much concerned what he assumes as to what is relevant. That's

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for the Board. They have their standards and they

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have their criteria of what is relevant. And one

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of them was a psychiatric examination.

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Now, this fellow at the psychiatric examination

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tells the psychiatrist: "You know, I'm innocent.

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I didn't do those things." But he's in prison be-

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cause he pled guilty to doing them.

So they asked him about it. Now, what's the big surprise?

I mean they're giving him a chance to explain, because they took it for granted that everybody who's in prison after pleading guilty, saying "I'm innocent, I didn't do it" --

You know, and the longer you think about it, the more time you spend the more sure you are that you never did it. But --

MR. KUNSBERG: The question is whether a parole could be denied solely on the basis of his inconsistency.

THE COURT: Well, it isn't so that it was denied on that basis. They gave him a chance to explain it. Then they decided this is a fellow who did plead guilty --

MR. KUNSBERG: It is apparent from the hearing that the Board was not interested in an explanation.

He offered an explanation. It was not investigated in any way.

THE COURT: What is his explanation? I'm curious.

MR. KUNS RERG: That he pleaded guilty as a legal strategy, on advice of counsel.

MR. WIZNER: I perhaps can flesh out the ex-

planation, your Honor, having just conferred with our client.

THE COURT: How much time did they send him away for on this strategic move of his?

MR. WIZNER: He had been serving time on the offense. His conviction was reversed.

His lawyer then advised him that he should plead guilty, since he was going before the Parole Board anyway, and the state had advised his lawyer that they weren't going to impose parole.

So he pleaded guilty because he was going before the Board. But he had previously had a reversal of the conviction and pleaded guilty, I guess,
to a lesser offense the second time around.

THE COURT: Now, this was a kidnapping offense or --

MR. WIZNER: I wonder whether that's a lesser included offense, too.

MR. O'NEILL: He had two separate sentences.

MR. WIZNER: Yes.

MR. O'NEILL: But the first reason cited by the Board for denying him the parole, by the panel, was two serious felony convictions involving violence. These were the reasons stated in an exhibit in the Court's file.

THE COURT: And I interrupted at this stage because there was a pause, again to go more fully into the necessity for taking oral testimony from these witnesses.

I think that now we can accept your offer of proof as evidence introduced, because it's in the form of depositions already, anyway.

And I have your contention with respect to the significance of that evidence. Right?

MR. KUNSEERG: Yes, sir.

THE COURT: Okay. So we're moving.

And you want to question this witness: Mr.

Gates.

CROSS-EXAMINATION

BY MR. O'NEILL:

Q Mr. Gates, if a prisoner in the course of a parole granting hearing had pointed out to the panel that there was some fact which he claimed was in error and that the panel was operating under that erroneous fact, what would the panel do?

A The panel would continue the case.

If the factor contested was an important factor to the decision, the panel -- this is one reason why the hearing is held two months in advance of eligibility, so that a case can be continued to obtain additional information. It's done

numerous times. And it can be done, and still the man can be paroled on the regular date. That's the reason we have the time, one reason we have the time area there.

Q So if Mr. LaBonte had said, "I really wasn't guilty of intoxication, I had a blood test to show that", what would the panel have done?

A It's possible that if he had enough evidence that they would have continued the case and heard it later.

Of course, he had been convicted of -- just if a man comes in and says he's not guilty and you have to take the Court's conviction of him, even though he says he's not guilty.

THE COURT: Well, no. This was an institutional --

THE WITNESS: That's what I mean, your Honor, is if he says he's not guilty of the misconduct report, he's been found guilty under a process which the courts have upheld, so the Board is in a rather difficult situation to say, well, you're not guilty, when the procedures have been upheld.

But if there was enough evidence, and it's been done on a number of occasions, the panel will continue the case for further information.

Q (By Mr. O'Neill) How about a claimed error of fact that hadn't been before a disciplinary committee?

A Well, in fact, most of the continuances have to do with situations that have nothing to do with misconducts.

Most of the continuances have to do with something an inmate brings out -- or the man, excuse me, the man brings out that the Board doesn't have the information on it and doesn't want to make the decision until it gets the information. So it will continue the case for two, three, four weeks and still be able to get the information and make the decision prior to the eligibility date.

Q Would it be true that there are times when the fact can be checked out that same day and a two or three week continuance is not necessary?

A It could be.

I've seen perhaps one or two instances of it. But normally it would not be that date. A Board had a schedule of hearings and would have d'fficulty, particularly the secretary might be sent out if the information is in a file that doesn't happen to be present, something like that.

Q Okay. Showing you Plaintiffs' Exhibit 4, Mr. Gates, the Statement of Organization and Procedures of the Board of Parole, is that publication available at the institutional libraries at Somers and Enfield?

A It's available at all of the libraries. And I think there were twenty-five copies sent to the Somers institution. It's been done three or four times, as they

1 wear out. 2 In fact, one of the plaintiffs here has a copy of 3 his own, with his name in it. 4 That's Mr. Holup? 5 A Mr. Holup, yes. But they are not given to each person coming in. 6 They are provided in the libraries and as new copies are 7 8 needed we provide them. 9 But they are in the portion of the library accessible to the prisoners? 10 11 Yes. 12 Mr. Gates, approximately how many parole granting 13 hearings have you sat in on in your thirty years as a parole member? 14 THE COURT: What kind of hearings? 15 MR. O'NEILL: Parole granting hearings. 16 17 Probably seven thousand. 18 THE COURT: Seven thousand? Seven? 19 THE WITNESS: Perhaps. MR. O'NEILL: "Seven thousand," he said. 20 THE COURT: Yes. I just wanted to make sure 21 22 it wasn't seventy.

THE WITNESS: No. sir.

THE COURT: All right.

(By Mr. O'Neill) And, Mr. Gates, you testified that

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when the inmate is notified of the scheduling of his parole hearing he's also given notification that he has the opportunity to submit materials to you, as the chairman, through his attorney or through family?

- A That's correct.
- Q That notice is an exhibit.

And I think you testified that in approximately 40 per cent of the times a prisoner takes advantage of this?

A I think I did. But that's incorrect, if that connotation is put on.

My statement, your Honor, was that probably 40 per cent have conferences that are set up with me, with people.

There are many more, almost most of the men at the Somers and Enfield institution write letters which are placed in the file, presenting information concerning their case, telling you whether they were guilty or not, and particularly telling what they plan to do when they get out.

There would be far more than 40 per cent that provide information for the files.

Q Do you ever deny anybody an opportunity to submit materials or to have someone come in and confer with you?

A Never.

Q So this 40 per cent is only because of the other 60 per cent of the cases nobody takes advantage of this opportunity?

A That's correct.

Q Have you ever had a case of your seven thousand where a prisoner claimed that he needed a lawyer or witnesses because the facts upon which the panel was deliberating were incorrect?

A No, sir.

Q The Board rules do not allow for the presence of counsel or any witnesses at a parole granting hearing, is that correct?

A At the hearing, that's correct.

Q At a granting hearing?

A At a granting hearing.

Revocation hearings are carried out under the requirements of the Morrissey and Gagnon decision.

Q But there are no witnesses produced by the Board, or by the prisoner?

A No.

Q And the prisoner is not allowed counsel or counsel substitute?

A Not at the hearing.

Q Why is that?

A Briefly, there are several reasons. One of the primary reasons is that the Board's concepts are based on a confidentiality of the hearing; the opportunity of the man to say anything he wants to say.

We do not have an officer from the institution present, or anything like that. He has an opportunity to say anything he wants to concerning himself, concerning his institutional confinement. And many of them do.

And he has an opportunity to discuss these things in complete confidence with the Board.

In fact, until the Board was faced with the subpoena of its tapes, or the request for its tapes, each man
was informed when he came into the hearing room that it was
completely confidential, that he didn't need be concerned
about what he said because the tape was just for the benefit
of the Board and its consideration.

That has had to be changed in the last two or three years. This is one of the primary reasons.

There is a logistical reason and from my own standpoint, my own belief, the members of the Board can also serve
so many days a month. We found in the revocation process
that the presence of attorneys and witnesses greatly lengthens
the hearings and consequently, my own belief - and I speak
only for myself - is that it would be almost impossible to
carry this out and establish hearings two months prior, assigning numbers to the hearings, to set the dates and the times of
the hearings, not knowing whether there are going to be attorneys or not, not knowing whether the case is going to take
ten minutes or two hours, and carry out this process with

attorneys and witnesses and being able to schedule the hear-ings.

It might be possible for a full time Board, but even then it would be very difficult. So there are these logistical problems in addition to the basic philosophical problems which I stated first.

Q In your experience at sitting at parole granting hearings, Mr. Gates, can you give a percentage or would there be any percentage of the number of cases wherein participation by counsel, or counsel substitute, or witnesses would have made any difference in the panel's determination of the facts upon which it based its decision?

A I would have to honestly say I don't know of any case I ever sat on that I thought the presence of an attorney would have changed a decision.

Q Or witnesses?

A Or witnesses.

BY THE COURT:

Q Well, that's because you regard yourself as an advocate of the applicant?

A That is correct. I go into the hearing wanting to parole the man.

I believe in parole. I believe it's proved itself.

Many people don't today, but I believe it has and, consequently,

I believe that the Board is not an adversary procedure; that

the Board is attempting to parole the person, attempting to get the information that will give it a chance to parole the persons under the requirement of the statutes.

Q Well, I mean, you must have some members of your Board who don't subscribe to that particular philosophical view of parole?

A Well, I think the record -- your Honor, I think you would have to make that judgment.

Q Well, I'm not going to make the judgment. You have dealt with a lot of them.

A The number of persons that this Board paroles and its record of such great number of paroles I think indicates that this must be the basis upon which the members work. In many states --

- Q Who picks them? You say the governor?
- A The governor appoints them.
- Q Is the governor aware of this philosophy?

A Well, your Honor, I have seen numbers of persons come on this Board in the thirty years I've been in this work - not just the eight or nine years I've been on this Board - who came on and were very much opposed to paroling and very conservative as far as voting for parole. And before they had been on the Board very long their philosophy changed completely.

Q You work on them? Well, strike that.

MR. WIZNER: Well, your Honor, we're not going

to object to its introduction into evidence of these files, but obviously as to the issue of their weight there is no evidence that everything in these files was read and considered by the panel members prior to their consideration of the case.

MR. O'NEILL: Well, if I have to put on the three panel members to testify as to their diligence in reading each file --

THE COURT: They may come in. He doesn't object to their admission.

MR. WIZNER: I don't object to them, your Honor.

THE COURT: He just says he does not accept
the introduction of the files or their existence
as proof that they were read by the panel members
before they voted.

MR. WIZNER: That's right, your Honor.

MR. O'NEILL: With regard to the LaBonte file, your Honor, it includes, as all of them do, copies of a pre-sentence report on Mr. LaBonte.

It may be that these are our only copies. So
I wonder if sometime I can have access to them to
make copies for the Board of Parole, if they are
our only copies.

THE COURT: It can't be but one copy. There

are four identical files, aren't there? One for each member of the panel and one for you, a master file?

THE WITNESS: Your Honor, when I inspected

the files this morning I found that they were not

in that one folder. I do not know -- I checked

that everything else was in the folder, except the

one folder on the pre-sentence investigation reports.

I don't know how they could have gotten out of it.

MR. O'NEILL: Well, it may have been because of Mr. Kunsberg and myself. We've given many copies of much of these files --

THE WITNESS: We have difficulty in getting investigations.

THE COURT: All right.

Well, I mean they won't get lost here.

THE WITNESS: I don't think, your Honor, it would be necessary. I think I'll find, when I go back to the office, that we have them in another file.

## BY THE COURT:

Q Each of these files contain a statement of the reasons for the denial of parole?

A They do, yes, your Honor. Not only in the case of

two of the plaintiffs, I believe, who have been denied more than once, there are written reasons for at least --

Q Prior denials?

A For the last two times. Because we were not giving written reasons before that.

Q When did you start giving written reasons?

A I started it on request about six months ago, because we were getting so many requests for it. And then it
mushroomed so much that I said we'll do it in every case.

And we discussed very thoroughly whether we would just go
back to doing the written reasons like we did eight years
ago and not do the oral ones. But the Board members insisted
they still would prefer to discuss the reasons with the men
following the hearings. So that's the reason we're doing
both now.

Q Well, you say there are so many requests. Who was making these requests?

A Basically, men who were filing writs against the Board who requested it.

THE COURT: I see. All right.

(Defendants' Exhibit B: File of Thomas LaBonte, marked full exhibit.)

(Defendants' Exhibit C: File of Howard Studley, marked full exhibit.)

(Defendants' Exhibit D: File of Michael Holup,

marked full exhibit.) MR. WIZNER: Excuse me, your Honor. During 2 the preparation of our brief in this case may we 3 have access to those files? THE COURT: Yes, of course. 5 MR. WIZNER: They will be on file here in 6 the court? 7 THE COURT: Sure. MR. WIZNER: Thank you very much. 9 THE COURT: Is that it? 10 MR. O'NEILL: Of this witness, yes, your Honor, 11 THE COURT: Thank you, Mr. Gates. 12 (Witness excused.) 13 MR. WIZNER: Petitioners rest, your Honor. 14 THE COURT: Well? 15 MR. O'NEILL: Well, I have three panel members 16 here who sat on Mr. Holup's case. 17 THE COURT: Is he the one who claims prejudice? 18 MR. O'NEILL: He is the one who claims preju-19 dice, your Honor. 20 THE COURT: You want to put them on, as long 21 as they're here, so they can, for the record --22 MR. O'NEILL: I think they have to. 23 THE COURT: You think you have to. All right. 24 There's a personal liability at stake. 25

called as a witness, being first duly sworn, was examined, and testified as follows:

J.

THE CLERK: Kindly state your name and address to the Court.

THE WITNESS: My name is Bert J. McNamara and I reside at 225 Deercliff Road in Avon,

THE COURT: What is your business or occupation?

THE WITNESS: Currently, your Honor, I'm an industrial consultant for T.R.W., Incorporated of Cleveland. I'm a director of a local meat packing company. I serve on the Board of Parole. And I retired as a vice-president of Pratt & Whitney Aircraft in '71.

THE COURT: Vice-president of what division, doing what?

THE WITNESS: Pratt & Whitney Aircraft Division.
THE COURT: All right.

## DIRECT EXAMINATION

## BY MR. O'NEILL:

Q Mr. McNamara, you're on the panel of the Board of Parole which denied Mr. Holup a parole on May 15th, 1975, is that right?

A Correct.

| Q In this action Mr. Holup claims, in part, that his          |
|---|
| request for parole was denied because - and I'm quoting now - |
| " because of personal animosity toward him and in re-         |
| taliation for legal actions he had undertaken previous to     |
| his parole hearing."  |
| Did either of those factors have any place, play              |
| any role in your decision?                                    |
| A None whatsoever.  |
| THE COURT: Do you know of any legal actions                   |
| he had taken?   |
| THE WITNESS: Yes, your Honor.                                 |
| I'm aware of this bit of having - how was it -                |
| having pled guilty to a crime, and then he got a              |
| new trial and got a lesser crime and he pled guilty           |
| one time, then he said he didn't do it.                       |
| It's a rather mixed bag, but it didn't motivate               |
| my decision. So I can't go into much more detail              |
| than that.  |
| THE COURT: All right.   |
| THE WITNESS: Except I was aware of it.                        |
| THE COURT: Yes.   |
| Anything else?  |
| MR. O'NEILL: Yeah yes, your Honor. I                          |
| didn't mean to be so casual.                                  |
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BY MR. O'NEILL:

Q Showing you the reasons for the denial of Mr. Holup's parole dated May 15th, 1975, which is contained in Defendants' Exhibit D, would that be an accurate statement of your reasons for voting to deny him a parole?

A Well, I'm going to say yes. It's quite a bit to read here, but I've read it within the last two hours, so no use in wasting everyone's time.

And this stated my position, personal position, about as accurately as it could be stated, as to the reasons for denial, etc.

Q One last question, Mr. McNamara. How long have you been on the Board of Parole?

A Oh boy. I believe Governor Meskill appointed me in early '71 or middle of '71. I served an interim --

The reason I don't know, I didn't get a four year term. I served a partial term with another man. Then I got another new four year appointment.

But it had to be in '71; very close to four years.

BY THE COURT:

- Q Do you like the work? I know you don't look for it.
- A I don't, no.
- Q But you're willing to continue to perform this service, are you?
  - A Till my term expires, at the pleasure of the governor,

been in this job, and it averages twenty cases, and I'm not certain of my accuracy - eight hundred to a thousand cases, I would estimate.

THE COURT: Well, I mean do you help maintain the 95 per cent average, or do you bring it down from 100 to 95? Do you know?

THE WITNESS: Well, your Honor, I haven't kept a course record. I don't approach it -- I never think of the percentage figures.

I conscientiously and to the best of my
ability try to view each case as an individual all
by himself and think of both him and the community.
A lot of our thinking goes into the good of the man
when we talk about releasing him. So I couldn't
answer your question.

THE COURT: Well, you started out with the same philosophy that Mr. Gates has, that you'd like to give this fellow parole if we could safely do it?

THE WITNESS: Yes. I think this is largely because of the compassion that one human being has for another, that you would hope that nobody would be incarcerated. I think that's basic to the whole thing.

I think you go in with that -- you read the

-- I try not to attempt to read more than five a day. Because

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Q Not a social worker?

Completely fair.

| 1  | A No, sir.  |
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| 2  | Q Not a criminologist?                                      |
| -3 | A No, sir.  |
| 4  | Q Since the time that you have been appointed to the        |
| 5  | Parole Board have you participated in any training program  |
| 6  | to equip you to carry out your responsibilities?            |
| 7  | MR. O'NEILL: Is there some question as to                   |
| 8  | Mr. McNamara's qualifications?                              |
| 9  | THE COURT: I'll allow the questioning.                      |
| 10 | MR. WIZNER: Yes, there is.                                  |
| 11 | MR. O'NEILL: What is it?                                    |
| 12 | MR. WIZNER: That's what I'm asking now.                     |
| 13 | MR. O'NEILL: Where's the issue of the case?                 |
| 14 | MR. WIZNER: You asked how long he had been                  |
| 15 | on the Parole Board, how many cases he heard.               |
| 16 | MR. O'NEILL: For the purpose of seeing                      |
| 17 | THE COURT: Overruled.                                       |
| 18 | A I'm sorry.  |
| 19 | Q I forgot the question.                                    |
| 20 | A I can't help you.   |
| 21 | Q The question was whether or not during the time you       |
| 22 | had been a member of the Parole Board there has been any    |
| 23 | training program in which you participated relative to your |
| 24 | responsibilities as a Parole Board member?                  |
| 25 | A Of a formal nature?                                       |

#### HERBERT

### S M I T H,

called as a witness, being first duly sworn, was examined, and testified as follows:

THE CLERK: State your name and address for the Court.

THE WITNESS: My name is Herbert Smith.

I reside at 75 Simpson Street in Hartford.

THE COURT: What is your business or occupation?

THE WITNESS: My business and occupation is a clergyman. I'm the Pastor of the St. James Baptist Church of New Britain, Connecticut. And also a member of the Board of Parole.

#### DIRECT EXAMINATION

### BY MR. O'NEILL:

Q Mr. Smith, you were on the panel of the Board of Parole which denied Mr. Holup a parole on May 15th of 1975, is that right?

A I was.

Q In this complaint against you Mr. Holup claims, in part, that -- withdraw that.

And you voted to deny the parole?

A I voted to deny the parole.

Q In his complaint Mr. Holup alleges, in part, that his parole was denied - and I quote now - " . . . because of personal animosity toward him and in retaliation for legal

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actions he had undertaken previous to his parole hearing."

Did your vote to deny parole have anything to do at all with personal animosity or in retaliation for legal actions he had undertaken?

No, my vote had nothing to do with that.

I show you a document contained in Defendants' Exhibit D, which is Mr. Holup's parole file, which is the statement of the reasons for the denial of Mr. Holup's parole. Like Mr. McNamara, you've read that this morning, haven't you?

I have, yes. A

Would you say that that accurately states your reasons for denying Mr. Holup parole?

Yes.

THE COURT: Did you have anything to do with the formulation of that Statement of Reasons?

THE WITNESS: Yes. As a matter of fact, when the man goes out of the room, out of the hearing, we convene in executive session and those reasons for denial are then formulated and marked out.

. And as you know, I was the chairman that day. The chairman marks down the reasons.

The man who started the hearing gives the individual the reasons when he returns to the room. The chairman, if in the event the member fails to include any of those in his discussion with the

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real sense it's an injustice not to read the man's file prior to his coming in.

MR. O'NEILL: I have no other questions, your Honor.

MR. WIZNER: No questions, your Honor.

THE COURT: Thank you, Mr. Smith.

(Witness excused.)

MR. O'NEILL: Mr. Kiernan.

#### 1 HARLES J. . . KI E R called as a witness, being first duly sworn, was 2 examined, and testified as follows: 3 THE CLERK: Please state your name and 4 5 address to the Court. THE WITNESS: My name is Charles J. Kiernan, 7 Old Lyme, Connecticut. THE COURT: How do you spell your last name? 8 9 THE WITNESS: K-i-e-r-n-a-n. THE COURT: What is your business or occupation, 10 11 Mr. Kiernan? THE WITNESS: Well, I'm retired, but I'm also 12 Selectman in the Town of Old Lyme and --13 THE COURT: That fits in with retirement, 15 does it, down in Old Lyme? THE WITNESS: I'm an old native there. 16 And I'm also a member of the Board of Parole. 17 THE COURT: Well, what did you do before you 18 19 became a Selectman? THE WITNESS: Well, the last immediate thing 20 I did, I ran a Big Brother Agency for about four 21 22 years. 23 Prior to that I was the Correction Chief Proba-24 tion Officer in the Superior Court in the New London 25 area.

you have something in mind in reading it; you try and find out

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|------|---|
| 1    | A Oh, yes.  |
| 2    | Q Well, you were in this business before?                   |
| 3    | A Oh, yes.  |
| 4    | Q You were a probation officer. You did pre-sentence        |
| 5    | reports on these convicted defendants before they were sent |
| 6    | away?   |
| 7    | A Yes, sir. Yes.  |
| 8    | Well, I've been, I always think of it, in the field         |
| 9    | of trying to help people. I still am.                       |
| 10   | Q As First Selectman?                                       |
| 11   | A As First Selectman also.                                  |
| 12   | THE COURT: All right. Thank you, Mr. Kiernan.               |
| 13   | You may be excused.   |
| 14   | . (Witness excused.)  |
| 15   | MR. O'NEILL: We have no other evidence, your                |
| 16   | Honor.  |
| 17   | MR. WIZNER: We have no other evidence, your                 |
| 18   | Honor.  |
| 19   | Perhaps we should set a briefing schedule.                  |
| 2    | THE COURT: All right. I'll listen to you                    |
| 2    | about that.   |
| 2    | What do you suggest?  |
| 2    | MR. WIZNER: Your Honor, in view of the fact                 |
| 3    | that we are going to have to come up here to examin         |
| 2    | the files and so forth, we would ask for three week         |

## CERTIFICATE

UNITED STATES DISTRICT COURT 2 DISTRICT OF CONNECTICUT 3 4 THOMAS LABONTE H-75-119 CIVIL VS. 5 CARL ROBINSON, Warden of C.C.I. and J. BERNARD GATES, Chairman 6 of the Connecticut State Board of Parole, et al 7 8 MICHAEL HOLUP H-75-174 CIVIL vs. 9 J. EERNARD GATES, and/or any member of the Parole Board 10 11 HOWARD STUDLEY H-75-144 CIVIL vs. 12 CARL ROBINSON, Warden, J. BERNARD GATES, Chairman of 13 the Connecticut State Board of Parole, et a. 14 15 I hereby certify that the within and 16 foregoing is a true and accurate transcript of my 17 original stenographic notes taken to record all 18 proceedings in the above-entitled cause, in the 19 United States District Court, for the District of 20 Connecticut, at Hartford, Connecticut, September 21 5, 1975, before Hon. M. Joseph Blumenfeld, U.S.D.J. 22 23

Official Court Reporter

25 1976. DATED:

## $\underline{\mathtt{W}}\ \underline{\mathtt{I}}\ \underline{\mathtt{T}}\ \underline{\mathtt{N}}\ \underline{\mathtt{E}}\ \underline{\mathtt{S}}\ \underline{\mathtt{S}}\ \underline{\mathtt{E}}\ \underline{\mathtt{S}}$

| 2  | J. EERNARD GATES         | age |
|----|--------------------------|-----|
| 3  | Direct (by Mr. Kunsberg) | 20  |
| 4  | Cross (by Mr. O'Neill)   | 81  |
| 6  | BERT J. McNAMARA         |     |
| 7  | Direct (by Mr. O'Neill)  | 95  |
| 8  | Cross (by Mr. Wizner)    | 101 |
| 9  | HEREERT SMITH            |     |
| 10 | Direct (by Mr. O'Neill)  | 106 |
| 12 | CHARLES J. KIERNAN       |     |
| 13 | Direct (by Mr. O'Neill)  | 111 |
| 14 | . Cross (by Mr. Wizner)  | 112 |
| 15 |                          |     |

# $\underline{\mathtt{E}} \ \underline{\mathtt{X}} \ \underline{\mathtt{H}} \ \underline{\mathtt{I}} \ \underline{\mathtt{B}} \ \underline{\mathtt{I}} \ \underline{\mathtt{T}} \ \underline{\mathtt{S}}$

| 2  | For the P | laintiffs:  |    |
|----|-----------|---|----|
| 3  | 1         | Transcript of Thomas LaBonte  | 4  |
| 4  | 2         | Transcript of Howard Studley  | 4  |
| 5  | 3         | Transcript of Michael Holup   | 4  |
| 6  | 4         | Statement of Organization and Procedures,<br>State of Connecticut Board of Parole | 4  |
| 7  | 5         | Letter to Mr. Gates from Mr. LaBonte  | 4  |
| 8  | 6         | Statement of Reasons Re H. Studley - 1/9/75                                       | 4  |
| 9  | 7         | Addendum to H. Studley's Progress Report  | 4  |
| 10 | 8         | Letter to Mr. Gates from H. Studley - 1/31/74                                     | 4  |
| 11 | 9         | Letter to Board of Parole from H. Studley - 5/2/73                                | 4  |
| 13 | 10        | FBI record of Michael Holup   | 4  |
| 14 | 11        | Progress report of Michael Holup - 12/11/70                                       | 4  |
| 15 | 12        | Progress report of Michael Holup - 5/15/75  | 5  |
| 16 | 13        | Board of Parole Statement of Reasons Re<br>M. Holup - 11/12/74                    | 5  |
| 18 | For the I | Oefendants:   |    |
| 19 | A         | Connecticut Board of Parole agenda  | 38 |
| 20 | В         | File of Thomas LaBonte  | 93 |
| 21 | C         | File of Howard Studley  | 93 |
| 22 | D         | File of Michael Holup   | 93 |
| 22 |           |   |    |